

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

IN THE MATTER OF:	)	UNILATERAL
	)	ADMINISTRATIVE ORDER
	)	FOR
	)	NONINTERFERENCE
<b>MCCORMICK &amp; BAXTER</b>	)	
<b>SUPERFUND SITE</b>	)	CERCLA Docket No.
Stockton, California	)	2004-16
	)	
HERMAN P. MILLER,	)	
	)	Proceeding Under Section
	)	106(a) of the Comprehensive
<b>RESPONDENT</b>	)	Environmental Response,
	)	Compensation and Liability Act,
	)	42 U.S.C. § 9606(a)
	)	

**I. JURISDICTION AND GENERAL PROVISIONS**

1. This Order is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA" or "Superfund"), 42 U.S.C. §106(a), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegations 14-14-A and 14-14-B, and to the Superfund Branch Chiefs, Superfund Division, EPA Region 9, by EPA Delegations R9 1290-13 and R9 1290-14A.

2. This Order pertains to the Old Mormon Slough, located in Stockton, San Joaquin County, California. The EPA must remediate contamination in the Old Mormon Slough, which is part of the McCormick & Baxter Superfund Site ("Site"). The EPA is taking a remedial response action at the Site under Section 104 of CERCLA, 42 U.S.C. § 9604. To protect public health and welfare and the environment, this Order requires Herman Miller ("Miller" or "Respondent") to

remove the vessel named "The Merit" and any other vessels/boats that Respondent owns, including "The Florence" and "The Owl and the Pussycat," from Old Mormon Slough permanently, so that EPA can conduct response activities in accordance with CERCLA. This Order also requires Respondent to refrain from certain described actions.

3. The EPA has notified the State of California of this action, in accordance with Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **II. PARTIES BOUND**

4. This Order applies to and binds Miller and his tenants, roommates, heirs, officers, employees, and agents. Based on information received from Respondent, his company, Environmental Developers, Inc., ("EDI") may be an owner or operator of one or more of the vessels. This Order also applies to and binds EDI to the extent that EDI owns or operates any of the vessels located in Old Mormon Slough. Any change in the organization or representation of Respondent will in no way alter Respondent's responsibilities under this Order.

5. Respondent shall ensure that its tenants, roommates, heirs, officers, employees, agents and representatives receive a copy of this Order. Respondent shall be responsible for any noncompliance with this Order.

## **III. FINDINGS OF FACT**

6. The Site is an approximately 32-acre area located in Stockton, California. The Site is bordered by Washington Street to the south, the I-5 freeway to the east, and an industrial facility to the west. Old Mormon Slough, which is north of the property owned by the McCormick & Baxter Creosoting Company ("M&B"), connects to the Stockton Deepwater Channel on the San Joaquin River. M&B operated a wood treating company from 1946 to 1991 at the Site. M&B ceased operations in 1991. Various wood preservation processes were used at the Site during its operational history. Chemical preservatives used at the Site contained creosote, pentachlorophenol ("PCP"), arsenic, chromium, copper and zinc. Solvents used were petroleum-based fuels such as fuel oil, kerosene, diesel, butane and ether. Both polynuclear aromatic hydrocarbons ("PAHs") and dioxin are found at the Site, including in Old Mormon Slough. The PAHs are carcinogenic and non-carcinogenic compounds found in creosote. Dioxin is

present as a contaminant in the industrial-grade PCP used for wood-treating. Arsenic, copper, chromium and zinc are also found in Old Mormon Slough.

7. In 1978, the California Regional Water Quality Board ("RWQCB") responded to a fish kill at the New Mormon Slough and the Stockton Deepwater Channel. New Mormon Slough is located on the other side of the freeway from Old Mormon Slough. The fish kill was traced to M&B. The RWQCB issued a Cleanup and Abatement Order to M&B dated January 27, 1978. Pursuant to that order, M&B installed a stormwater collection system and perimeter levees to prevent further stormwater discharges from the Site. Stormwater is collected in two stormwater holding ponds in the southwestern portion of the Site. In 1984, M&B entered into an agreement with the California Department of Health Services ("DHS") and RWQCB to investigate and clean up contamination at the Site. M&B installed a series of groundwater monitoring wells and conducted soil and groundwater sampling under DHS oversight. In 1981, M&B closed the oily waste ponds located in the northwestern corner of the Site along the Old Mormon Slough. M&B removed approximately 144 tons of contaminated soil from the larger pond area and backfilled this area with clean fill.

8. On February 6, 1992, EPA proposed to add the Site to the Superfund National Priorities List ("NPL"), 40 CFR Part 300, Appendix B. The NPL is the list, compiled by EPA pursuant to CERCLA Section 105, 42 U.S.C. § 9605, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response. The Site was listed on the NPL on October 14, 1992.

9. The first EPA removal action started on July 8, 1992. Removal actions are generally the early response actions taken by the Superfund program to address the most immediate and highest risk first. EPA carried out several phases of removal actions to dispose of chemicals and sludges remaining at the Site, to demolish above-ground tanks and buildings, and to improve Site security. In 1996, EPA installed a sheet piling wall along the southern shoreline of Old Mormon Slough to control seeps from the oily waste pond area into the Slough. In July 1997, EPA excavated approximately 12,000 cubic yards of contaminated soil from behind the sheet piling wall. The excavated soil was moved to existing concrete sumps and to a newly-constructed lined repository in the central portion of the Site. The oily waste pond area was backfilled with clean imported fill. The central area of the Site was covered over with clean imported fill and an asphalt cap. All wood treatment process units and tanks that were associated with historical operations at the Site have been emptied of chemicals, cleaned and

removed from the Site. In addition, most of the above-ground structures at the Site were demolished.

10. The Remedial Investigation ("RI") report concluded that past wood treating operations at the Site resulted in the contamination of soil, groundwater, and Old Mormon Slough sediments. Areas identified as the probable sources of the contamination presently found at the Site include the main processing area, the oily waste ponds, and the treated wood storage areas.

11. The Feasibility Study ("FS") evaluated the different alternatives for cleanup options at the Site.

12. The Site is divided into two operable units: (1) the upland soils and groundwater operable unit, and (2) the surface water and sediment in Old Mormon Slough operable unit.

13. The Record of Decision ("ROD") for the Site was finalized on March 31, 1999. The ROD presents the final remedies for vadose zone soils and sediments, and an interim remedy for groundwater. The selected remedy for the sediment is the placement of a two-foot thick sand cap to isolate contaminated sediment in Old Mormon Slough. In the ROD, EPA concluded that it was impracticable to excavate, treat, and/or dispose of all contaminated sediment at the Site.

14. The Old Mormon Slough is approximately 760 meters (2500 feet) long and 55 meters (180 feet) wide. The majority of the Old Mormon Slough is approximately 3 meters (10 feet) deep.

15. Although warning signs are posted in the area and the county has conducted outreach programs to warn residents of the dangers of eating locally-caught fish, subsistence fishermen are known to currently fish in Old Mormon Slough. Sediment in the Old Mormon Slough is contaminated with dioxin, PAHs and metals. Creosote is a complex mixture of over 200 compounds, which are primarily PAHs. Creosote is a potent toxicant causing both acute and chronic effects in humans. Creosote is also a carcinogen. The PAH benzo(a)pyrene ("BAP"), which is found at the Site, is classified as a known or likely human carcinogen. Dioxin is also found at the Site. Oral exposure to dioxin causes increased incidence of tumors in the liver, tongue, hard palate and lungs in rats, and in thyroid and adrenal glands in mice. Dioxin is classified as a known or likely human carcinogen. Adverse reproductive effects are caused in a variety of

animals. The major observed toxic effect on humans is chloracne. Human exposure through herbicides and other tetrachlorodibenzo-p-dioxin (TCDD)-contaminated chemicals can also cause altered liver function, porphyria, neurotoxicity, and hyper pigmentation. Toxic effects to acutely exposed animals include extreme weight loss, liver and thymus damage, immunotoxicity, and hepatotoxicity.

16. Site-specific studies concluded that some risk to ecological risk receptor species can be attributed to the presence of PAHs and dioxin in surface sediments. PAHs posed a risk to all assessment endpoints, but threshold limits for PAHs were violated principally for fish and benthic fauna. Dioxin was estimated to be a potential risk to fish and bird reproduction and health.

17. The sediment remedy was divided into two phases. Because of concerns about the impact on species protected by the Endangered Species Act, it is necessary for the remediation to take place from July to December. In-water construction is limited to a five-month period each year when endangered species are not migrating in the area of the Site. Phase I, performed from October to December 2002, consisted of the following activities: removal of old pilings in Old Mormon Slough; collection of water quality samples; installation of a temporary silt curtain; removal of rip-rap; cutting back the southern shoreline; installation of new rip-rap system and berm; and removal of the temporary silt curtain. Phase II was scheduled to take place from July 1, 2003, to December 31, 2003; however, EPA has been unable to perform the remedy due to the presence of Respondent's vessel, the Merit. Major Phase II activities will include: mobilization of barges that will bring in cap material from Rio Vista to Old Mormon Slough; installation of temporary silt curtain(s); clearing of debris on slough bottom; collection of water quality samples; placement of sediment cap; bathymetric surveying of slough bottom; placement of permanent pilings; removal of temporary silt curtain(s) and placement of permanent log boom. The log boom will prevent all vessels from entering Old Mormon Slough. The cap material is expected to be brought to the Site by boat.

18. By letter dated January 3, 2002, EPA contacted Stockton Cold Storage ("SCS"), the owner of property located adjacent to Old Mormon Slough, to which Respondent's vessel is docked. This letter requested SCS to remove the vessel docked at its facility. SCS explained to EPA that SCS did not own the vessel and did not have a rental agreement with Respondent; Respondent was docked to SCS's property when SCS bought the property. SCS provides electricity and water to Respondent's vessel as a courtesy.

19. The Merit is a 1928 65-foot rectangular scow barge with a forward rotating crane. It has been fitted with a rectangular steel cabin structure for use as a houseboat. It has an attached floating repair dock and container storage raft. Respondent also owns a sailboat, "The Owl and the Pussycat," that is located in the Slough. In approximately January 2004, Respondent brought another vessel, called "the Florence," into Old Mormon Slough. The Florence is approximately the same size as the Merit and is currently being used as another houseboat.

20. Based on information received from Respondent, EDI may be an owner or operator of one or more of the vessels. To the extent EDI is an owner or operator of one or more of the vessels, EDI is required to comply with this Order.

21. EPA telephoned Respondent in the beginning of 2002 to discuss the sediment remedy and the removal of the Merit and related vessels. Respondent told EPA that he would voluntarily move the vessel and he was looking at several locations in the Stockton area. Eventually, Respondent told EPA that he was unable to find a location for his vessel. EPA personnel then met with Respondent in November 2002 to discuss relocation. EPA again informed Respondent that his vessels would have to be removed from Old Mormon Slough.

22. Respondent presented options to EPA, including changing the sediment remedy, moving his vessels back into Old Mormon Slough after the sediment remedy was completed, or having EPA purchase the Merit. Respondent told EPA that he would also accept waterfront property. EPA determined that moving the vessel back into Old Mormon Slough after the sediment capping was not acceptable.

23. If the vessel were brought back into the Old Mormon Slough after capping, the vessel would be resting very close to, or directly on top of, the bottom of the Slough. Additionally, the vessel has four steel poles called "spuds" that anchor it. If the vessel were returned to the Slough, Respondent has told EPA that he would drop the spuds again, through the clean material and into the underlying contaminated sediment. This would cause serious damage to the sand cap.

24. EPA has knowledge that the Merit sank a few years ago and there was a serious fuel spill that caused the Coast Guard to respond to the spill. If this were to happen again, the Coast Guard equipment would damage the sand cap. Respondent's vessel would have to be moved back into Old Mormon Slough by a tug or other vessel because it is incapable of movement on its own. The bottom of

Old Mormon Slough would be two feet higher, and Respondent's vessel and the prop wash would damage the newly-installed cap.

25. EPA also determined that a change in the sediment remedy was not feasible. EPA evaluated several different technologies in selecting the final remedy for the Site and went through the public comment period before ultimately selecting the sediment remedy of capping.

26. After meeting with Respondent in November 2002, EPA explored the option of purchasing the Merit outright from Respondent as well as providing Respondent relocation benefits. EPA hired an appraiser to evaluate the Merit's worth. EPA also performed an historical evaluation of the Merit. This historical evaluation determined that the vessel is not eligible for the National Historic Register.

27. In April 2003, EPA attempted to discuss relocation and purchase of the Merit with Respondent, but Respondent left the Stockton area and did not respond to e-mails, phone calls or letters. EPA discovered that the Merit was locked and vacant. EPA was unable to implement Phase II of the sediment remedy in 2003 because of the presence of Respondent's vessel. However, EPA decided not to initiate proceedings to have the Merit involuntarily removed. EPA did not believe that this possibility had been adequately addressed with Respondent, and EPA wanted to give every effort to seeking a mutually acceptable solution.

28. In early September 2003, EPA learned that Respondent had returned to the Stockton area. On September 24, 2003, EPA presented Respondent with a relocation package that included relocation as well as purchasing the Merit from Respondent. EPA offered Respondent relocation benefits in accordance with the Uniform Relocation and Real Property Acquisition Policies Act ("URA"), 42 U.S.C. Sections 4600-4655, and applicable regulations, 49 C.F.R. Part 24, et seq., and EPA guidance, "The Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions" (June 30, 1999). Respondent responded that he wanted either \$1,500,000 from EPA or waterfront property. EPA informed Respondent that it was unable to provide this type of compensation to Respondent. EPA met with Respondent again on January 21, 2004 with a final relocation offer of \$80,350. Respondent rejected this relocation offer and again proposed \$1,500,000.

29. In order to complete the remedial action to address the imminent and substantial endangerment to human health as called for by the ROD, EPA

necessarily must take all steps to ensure that Old Mormon Slough is permanently free of any barges or vessels so that EPA can perform Phase II of the sediment remedy. Once the remedy is implemented, Old Mormon Slough must be free of any barges or vessels that could damage the sediment cap.

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above and based on the Administrative Record for this response action, EPA has determined that:

30. The Site, including without limitation, the Old Mormon Slough, is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

31. PAHs and dioxin are “hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed as such at 40 CFR § 302.4, and, as described above in Section III (FINDINGS OF FACT) of this Order, there has been, within the meaning of Section 101(22), 42 U.S.C. § 9601(22), a release of these hazardous substances at or from the Site, including without limitation, the Old Mormon Slough.

32. Respondent Herman P. Miller, his company EDI, and any individuals living on The Merit or other vessels in Old Mormon Slough are “persons” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

33. There have been releases or threatened releases of hazardous substances into the environment at and from the Site within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a).

34. EPA has authority to issue this Order requiring Respondent to remove the vessel known as the Merit, as well as any other vessels or objects under his control, from Old Mormon Slough, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

35. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. 9601(22).

36. The conditions present at the Site constitute an imminent and substantial endangerment to public health, welfare, or the environment.



37. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

38. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), “[the] President may . . . after notice to the affected State, take action including . . . issuing such orders as may be necessary to protect public health and welfare and the environment.”

39. The actions forbidden and required by this Order are necessary to protect the public health, welfare, and the environment, and are not inconsistent with the NCP, 40 CFR Part 300, and CERCLA.

## **V. ORDER**

40. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this response action, EPA orders that, within sixty (60) days of the effective date of this Order:

(a) Respondent remove the vessels named the Merit, the Owl and the Pussycat, the Florence, and any associated or other vessels owned or operated by Respondent or his company, EDI, from Old Mormon Slough. EPA believes that Respondent can remove the Florence from Old Mormon Slough without difficulty, since Respondent only recently brought this vessel into the Slough. Additionally, EPA believes that Respondent can remove the Owl and the Pussycat without difficulty since it is a sailboat. EPA, however, is aware that Respondent may have difficulty in finding a location that will accept the Merit.

(b) If Respondent is unable to remove the Merit from Old Mormon Slough, EPA will continue to make available to Respondent its offer to pay relocation benefits to Respondent and for EPA to remove the Merit from Old Mormon Slough and dispose of the vessel. Respondent shall notify EPA if Respondent is willing to accept EPA’s offer or if Respondent otherwise is willing to allow EPA to remove the Merit from Old Mormon Slough.

(c) Alternatively, EPA hereby orders Respondent to vacate the Merit and to permit EPA to remove the Merit from Old Mormon Slough. If Respondent does not comply with this Order, EPA hereby places Respondent on notice that EPA will exercise its legal authorities to remove the Merit and any related vessels from Old Mormon Slough and dispose of the vessels.

EPA further orders that Respondent refrain from certain activities, as follows:

41. Respondent shall not interfere with EPA and its representatives or contractors as they perform actions that EPA determines are necessary to complete the actions described in the ROD. This noninterference shall include, but not be limited to, keeping Old Mormon Slough free of barges or other vessels owned or controlled by Respondent or EDI permanently.

42. This Order shall be effective the date the Order is signed by the Branch Chief of the Superfund Division. Respondent shall provide written notice to EPA, not later than 5:00 P.M. Pacific Time, on the twenty-fifth (25th) calendar day after the effective date of this Order indicating whether he will comply with this Order (Written notice may be sent by FAX to EPA Attorney Janet Magnuson at (415) 947-3570 or by email to: [magnuson.janet@epa.gov](mailto:magnuson.janet@epa.gov)). If Respondent does not unequivocally state that he will comply with this Order, Respondent shall be in violation of this Order, and Respondent shall have failed or refused to comply with this Order. Further, Respondent's failure to comply with paragraphs 40 through 41 of this Order, or any action taken by Respondent to deny EPA access to the Old Mormon Slough for the purpose of conducting a remedial response, or any attempt to interfere with the actions described in the ROD shall be a violation of this Order.

## **VI. NOTIFICATION OF RELEASES**

43. If any incident, or change in site conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately notify the EPA Remedial Project Manager ("RPM") of the incident or site conditions. EPA may respond to the release or endangerment and reserves the right to pursue cost recovery.

## **VII. AUTHORITY OF THE EPA REMEDIAL PROJECT MANAGER**

44. The EPA's designated RPM, Marie Lacey, is responsible for overseeing the proper and complete implementation of this Order. The RPM individually has the authority granted by the NCP, 40 C.F.R. § 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other response action undertaken at the Site. The EPA may change its designated RPM from time to time, and will provide Respondent written notice of such changes.

## **VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE**

45. Violation of any provision of this Order may subject Respondent to civil penalties of up to thirty-two thousand five hundred dollars (\$32,500) per violation per day,<sup>1</sup> as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

## **VIX. RESERVATION OF RIGHTS**

46. Nothing herein limits the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein prevents EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant

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<sup>1</sup>Statutory penalty provisions have been increased to \$32,500 for events occurring on or after March 15, 2004, by the Debt Collection Improvement Act of 1996 and its implementing regulations, the Civil Monetary Penalty Inflation Rule, 69 Fed. Reg. 7121 codified at Title 40 of the Code of Federal Regulations (CFR) Part 19.

to CERCLA or any other applicable law. The EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order and not reimbursed by Respondent.

## **X. OTHER CLAIMS**

47. In issuing this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or his employees, agents, representatives, successors, officers, assigns, contractors or consultants in carrying out any action or activity pursuant to this Order. Neither the United States nor EPA may be deemed a party to any contract entered into by Respondent or his employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

48. This Order is not a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

49. Nothing in this Order is a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including any claims of the United States for costs, damages and interest under Sections 104(e), 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

50. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA Section 106(a), 42 U.S.C. 9606(a), et seq., or any other applicable law.

51. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

## **XI. MODIFICATIONS**

52. The Order may only be modified in writing by signature of the Branch Chief, Superfund Division, EPA Region 9.

## **XII. ACCESS TO ADMINISTRATIVE RECORD**

53. The Administrative Record supporting these response actions will be made available for review at EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and at the Stockton Public Library, Stockton, California.

## **XIII. OPPORTUNITY TO CONFER**

54. Respondent may, within ten (10) days after the effective date of this Order, request a conference with EPA's attorney and remedial project manager to discuss this Order. If requested, the conference shall occur within seven (7) days of Respondent's request for a conference at EPA's office at 75 Hawthorne Street, San Francisco, CA. Alternatively, EPA is willing to have this conference, if requested by Respondent, in the Stockton area at a mutually agreeable location. Requests for a conference shall be made by telephone to EPA Attorney Advisor Janet Magnuson at (415) 972-3887 and confirmed in writing by FAX to (415) 947-3570 or by email to [magnuson.janet@epa.gov](mailto:magnuson.janet@epa.gov). Respondent may be represented by an attorney or other representative at the conference.

55. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made.

## **XIV. SEVERABILITY**

56. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent will remain bound to comply with all

provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

#### **XV. EFFECTIVE DATE AND DURATION**

57. This Order shall be effective on the date the Order is signed by the Branch Chief of the Superfund Division. It will remain effective until formally withdrawn by EPA in writing.

**IT IS SO ORDERED.**

BY: Elizabeth J. Adams      DATE: March 25, 2004  
Elizabeth J. Adams  
Branch Chief, Superfund Division  
Region 9  
U.S. Environmental Protection Agency